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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2696/2000

New Delhi, this the 29th day of October, 2001

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

1. Brahm Singh S/o Prabhu Dayal,
R/o Village Mudaila Khurd,
Delhi

2. Anand Singh S/o Ram Dayal,
R/o Village Bohar,
Distt. & Tehsil Rohtak,
Haryana

Applicants

(By Advocate : Shri Arun Bhardwaj)

Versus

1. Union of India,
Secretary, Ministry of Home Affairs,
Government of India,
New Delhi

2. Commissioner of Police,
Police Headquarters,
Inderparastha Estate,
New Delhi

3. Additional Commissioner of Police (PCR & Commu)
PHQ, IP Estate,
New Delhi

4. Deputy Commissioner of Police,
Police Control Room,
New Delhi

.... Respondents

(By Advocate : Mrs. Jasmine Ahmed)

O R D E R (ORAL)

By Hon'ble Shri S.A.T. Rizvi, Member (A) :

On the charge of forcibly snatching a sum of Rs.40,000/- from a stray passenger (Shri Chandresh Kumar) on 30.9.1993 morning, the applicants (S.I. Brahm Singh and H.C. Anand Singh) have been tried departmentally along with Constable (Driver) Kailash Chand. A FIR being No.297/93 was also registered against the applicants and Constable Kailash Chand under Section 384/34 of IPC on 1.10.1993 at P.S. Delhi Cantt.

(2)

On 21.10.1993 the applicants as well as Ct. Kailash Chand were dismissed from service by holding that in the circumstances of the case it was not practicable to hold departmental enquiry against them. The aforesaid dismissal order was revoked by the appellate authority on 27.1.1994 and it was ordered that regular departmental proceedings should be initiated against all the three delinquent officials. Accordingly, by an order dated 15.3.1994 a regular D.E. was ordered to be conducted against them.

2. In the final order passed by the disciplinary authority in the aforesaid departmental proceedings, all the three delinquent officials have again been dismissed by the disciplinary authority by his order dated 2.12.1998. On being carried in an appeal, the order passed by the disciplinary authority has been upheld and the appeals filed by the delinquent officials were rejected on 14/27.9.1999. The matter was agitated before the revisional authority, who also found merit in the orders passed by the disciplinary authority as well as the appellate authority, ~~but~~ ^{and} refused to interfere in the matter. The revision petitions filed by the delinquent officials were accordingly rejected on 12/16.11.2000. The applicants by this OA seek annulment of the aforesaid orders passed by the disciplinary authority, the appellate authority as well as the revisional authority respectively on 2.12.1998, 14/27.9.1999 and 12/16.11.2000.

3. We have heard the learned counsel appearing on

behalf of the applicants at great length. We have also heard the learned counsel appearing on behalf of the respondents. At the instance of the learned counsel appearing on behalf of the applicants we have had occasion to peruse the relevant portion of the orders passed by the disciplinary, the appellate and the revisional authorities and also the findings recorded by the inquiry authority.

4. The inquiry authority has, after a detailed consideration of the evidence on record and the other relevant material, found fault with all the three delinquent officials. According to the said authority, the charges levelled against them have been proved beyond any shadow of doubt. After the submission of the findings of the inquiry authority, the D.E. was held in abeyance on account of the criminal proceedings pending against the delinquent officials in the Court of the Metropolitan Magistrate. By its order dated 7.12.1999, the Court of the Learned Metropolitan Magistrate acquitted all the three delinquent officials who were tried as accused persons in the aforesaid FIR No.297/93.

5. Before the verdict of the Metropolitan Magistrate's court became available, the disciplinary authority in the present case proceeded to pass the order of dismissal, already referred to, on 2.12.1998 which was confirmed by the appellate authority on 14/27.9.1999. The revisional authority's orders were passed, however, on 12/16.11.2000, after the Learned

(4)

Metropolitan Magistrate had decided the aforesaid criminal case on 7.12.1999.

6. The learned counsel appearing on behalf of the applicant has raised issues such as non-examination of the complainant (Shri Chandresh Kumar), non-supply of the statement made by the complainant (Shri Chandresh Kumar) during the course of the preliminary enquiry, the complainant supporting the case of the delinquent officials before the Learned Metropolitan Magistrate and supply of copies of certain documents. We have considered the rival contentions raised on behalf of the parties and find no merit in the contentions raised by the learned counsel for the applicants.

7. Insofar as the non-supply of certain documents is concerned, the applicants have not placed on record written requests, if any, made by them in that regard before the inquiry authority. In regard to non-examination of the complainant (Shri Chandresh Kumar), the respondents have categorically asserted that due effort was made on several occasions to secure his presence. The complainant, however, failed to turn up for being examined in the departmental proceedings. He was, therefore, dropped and the respondents proceeded with the departmental enquiry without the complainant. Insofar as the statement made by the complainant during the preliminary enquiry is concerned, the learned counsel appearing on behalf of the respondents has asserted that in arriving at the conclusion of guilt on the part of the delinquent officials, the inquiry

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(5)

authority has not placed exclusive reliance on what the complainant had to say in his statement in question. According to her, the statements made by PWs 3 & 4 are enough to establish the guilt of the delinquent officials. PW-3, ASI Daya Ram, is, for instance, a witness to recovery of money from the delinquent officials and PW-4, Inspector Zile Singh, is responsible for recording the statements of disclosure made by the delinquent officials after completion of the usual formalities such as preparation of search memos etc. Thus, according to her, it is, in any case, established beyond any manner of doubt that the sums of money approximating to Rs. 13,000/- were recovered from each of the three delinquent officials who had, in all ^a ~~████████~~, snatched a total sum of Rs. 40,000/- from the complainant. The aforesaid sums of money were recovered at the instance of the delinquent officials themselves. In this view of the matter, according to the learned counsel, no prejudice has been caused to the legitimate defence of the applicants even if a copy of the statement made by the complainant during the preliminary enquiry has not been supplied. In departmental proceedings, according to the learned counsel for the respondents, decisions are taken on the basis of preponderance of probabilities and in the present case, judged from this view point, the guilt of the delinquent officials can be said to have been sufficiently established. The applicants have, therefore, been justly punished with the dismissal from service. The ^b revisional authority ~~view point~~ has also stated in his order dated 12/16.11.2000 that the findings of the

inquiry authority are based on preponderance of evidence recorded during the enquiry.

8. The disciplinary authority has, we find, relied wholly on the report/findings submitted by the inquiry authority, though he has ^{also} considered the statements of PWS/DWS, Defence Statements/representations made by the defaulters and the evidence/record available on the DE file. The delinquent officials were heard in person by the appellate authority who has taken into account the plea advanced on behalf of the applicants that copy of the complainant's statement during the P.E. has not been supplied. After discussing the matter in some detail, this is what the appellate authority has stated in his order dated 14/27.9.1999 -

".....This plea of the appellants is also not tenable because PWS 3 & 4 have fully corroborated the statement of the complainant Shri Chandresh Kumar. The recoveries of extorted money was affected on the instances of the appellants by P.W.4 Insp. Zile Singh with the help of P.W.3 ASI Daya Ram. The other pleas taken by the appellants are also not tenable and did not help them in any way."

It will be seen that the appellate authority has also relied on preponderance of probabilities in deciding the appeal.

9. The order passed by the disciplinary, the appellate and the revisional authorities are, in our view, speaking and reasoned orders and have been passed after a careful consideration of the evidence on record.

2 The procedure laid down for conducting departmental

(7)

enquiries has also been followed properly and adequately and in our judgement, in the circumstances of the present case, it is not possible to argue that the legitimate defence of the applicants has been prejudiced in any manner.

10. For the reasons mentioned above, we find that the present OA is devoid of merit. The same is dismissed with no order as to costs.



(S.A.T. RIZVI)
MEMBER (A)



(ASHOK AGARWAL)
CHAIRMAN

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